

RESOLUTION NO. 17
(Series of 2020)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO TO IMPLEMENT THE PROVISIONS OF STATE OF COLORADO EXECUTIVE ORDER D 2020 093 PERTAINING TO LOCAL AUTHORIZATION OF THE SUSPENSION OF LAWS PROHIBITING PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES BUT ONLY WITHIN LIMITED AREAS OF THE TOWN OF TELLURIDE AND ONLY AS TO TAKEOUT ALCOHOLIC BEVERAGES.

WHEREAS, the Town of Telluride, Colorado (the “Town”) is a duly organized and existing home rule municipality of the State of Colorado (the “State”), created and operating pursuant to Article XX of the Constitution of the State and the home rule charter of the Town (the “Telluride Charter”); and,

WHEREAS, Corona Virus Disease 2019 (“COVID-19”) is a highly contagious virus that has spread worldwide and is causing serious illness or death in certain cases, particularly in, but not limited to, the elderly or persons with underlying health conditions; and,

WHEREAS, on March 10, 2020 Jared Polis, the Honorable Governor of the State of Colorado, declared a State of Emergency for the entire State of Colorado in response to COVID-19 as the number of cases in Colorado and in the United States of America increased, and Governor Polis also announced numerous emergency measures to protect public health, safety and welfare; and,

WHEREAS, on March 11, 2020 the World Health Organization (“WHO”) declared the worldwide outbreak of COVID-19 a “global pandemic”, surpassing the stage of “global health emergency” declared by the WHO on January 30, 2020 due to the worldwide spread of COVID-19; and,

WHEREAS, on March 13, 2020, the President of the United States, Donald J. Trump, declared a national state of emergency due to COVID-19; and,

WHEREAS, on March 16, 2020 the Board of County Commissioners of San Miguel County, Colorado declared a Local Disaster Emergency due to COVID-19; and,

WHEREAS, on March 20, 2020 the Telluride Town Manager issued a Declaration of Local Disaster Emergency (the “Declaration”), on file with the Town Clerk and with the County Clerk and Recorder, which Declaration was extended by formal passage of a Resolution by the Telluride Town Council on March 27, 2020; and,

WHEREAS, part of the governmental response to COVID-19 from the State of Colorado and the San Miguel County Board of County Commissioners pursuant to several versions of Public Health Orders (“PHOs”) previously included the closure of all restaurant dine-in options for over two months. While restaurant dine-in options have resumed under Colorado and San Miguel County PHO guidance, they are now subject to significant limitations on indoor dining occupancy at 50% of the posted occupancy code limit, not to exceed 50 people maximum, whichever is more restrictive, and these PHO provisions will continue to limit the financial viability of restaurants after they have been particularly hard hit by a complete shut-down of dine-in options for over two months; and,

WHEREAS, the Town of Telluride values both the retail industry along with the restaurant and dining experience enjoyed by visitors and local citizens alike; and,

WHEREAS, the Town is committed to encouraging and assisting restaurants with the possible use of Town public rights-of-way to offer areas that could assist with some of the social distancing and occupancy restrictions that are expected during the Summer of 2020 as the country continues to recover and reopen from the impacts of COVID-19; and,

WHEREAS, on May 18, 2020 Colorado Governor Jared Polis encouraged Colorado cities and towns to look at a variety of options to encourage outdoor dining, including the use of public sidewalks and streets to host outdoor dining; and,

WHEREAS, Governor Polis also specifically mentioned the expected spacing and occupancy restrictions for dine-in restaurants as a continued challenge to the restaurant industry during the COVID-19 pandemic and that local jurisdictions should strongly consider working with local restaurants to attempt to boost restaurant capacity with the use of outdoor dining including in public rights-of-way and park areas; and,

WHEREAS, on May 26, 2020 the Telluride Town Council approved Resolution No. 12, Series of 2020 (“Resolution 2020-No.12”), which, among other things, closed sections of the Colorado Avenue right-of-way between Oak Street and Willow Street to vehicular traffic and opened the same up to a variety of public pedestrian uses, including for the purpose of this resolution, significant areas in each block for non-exclusive communal dining space available for any lawful public use or to assist with either take out, delivery or possible wait service from licensed restaurant establishments; and,

WHEREAS, on June 5, 2020 Colorado Governor Jared Polis issued Executive Order D 2020-093 authorizing a suspension of the provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII), thereby suspending the enforcement of existing Colorado laws prohibiting public consumption of alcohol beverages on any public right-of-way if a local jurisdiction also permits the same suspension by ordinance, resolution or rule adopted by a municipality, city and county, or county; and,

WHEREAS, it is the intent of this Resolution to exercise the authority granted to local governments under Executive Order D 2020-093 on the local level in the Town of Telluride to suspend both Colorado law and local provisions under the Telluride Municipal Code (“TMC”) that otherwise would normally prohibit the public consumption of alcohol to assist restaurant patrons with lawfully consuming Takeout Alcoholic Beverages while using limited areas of Town property for outdoor dining as those areas are detailed in the provisions of this Resolution; and,

WHEREAS, the Town Council is also adopting this Resolution pursuant to its Home Rule Authority provided under the Colorado Constitution, Article XX, Sections 1-6, the Telluride Charter and the Town’s Police Power authority under Colorado Revised Statute Section 31-15-401(1)(b) with the explicit authority to “[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease” within the limits of the Town of Telluride; and,

WHEREAS, the Town also has explicit authority under Colorado law found at Colorado Revised Statute Section 31-15-702, by an enactment of the governing body of the municipality, to regulate, open and alter streets, alleys, sidewalks, parks and public places and to regulate traffic and sales upon streets, alleys, sidewalks, parks and public places.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO:

Section 1. Specific, Limited Areas of the Town of Telluride Exempted from Provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII), TMC Section 10-7-10 and Hereby Permitted for Open Public Consumption of Alcohol.

Pursuant to the authority granted by Colorado Governor Jared Polis under Executive Order D 2020-093, issued June 5, 2020, the Town of Telluride hereby authorizes a suspension of the provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII) and any other sections of law or ordinance enacted by the Town of Telluride, including in the TMC under Section 10-7-10(a)(2), which existing laws otherwise would prohibit open public consumption of alcoholic beverages in any public place or on any public right of way.

The suspension of the open container law authorized herein is only as to the following limited areas of the Town of Telluride, as the same areas are also referenced and delineated in this Resolution under Exhibits A and B, attached hereto and incorporated herein by reference:

- A. Within the specific areas designated and delineated as the Town owned non-exclusive Colorado Avenue Communal Dining Areas (“Colorado Avenue Communal Dining Areas”) as the same were established by Town of Telluride Resolution 2020-No.12 between Oak Street and Willow Street along Colorado Avenue as the same are also referenced and delineated in this Resolution under Exhibit A, attached hereto and incorporated herein by reference.
- B. Within the areas of the following Town of Telluride “pocket parks”, but not including the paved sidewalk areas of the same that bound and border the following parks:
 - i. North Oak Street Park.
 - ii. South Oak Street Park (also known as Elks Park).
 - iii. North Spruce Street Park.
 - iv. South Spruce Street Park.

(The areas of permitted open public consumption under Section 1(A&B) are designated and delineated on Exhibit A.)

- C. That area of the Town’s West Pacific Avenue right-of-way west of the intersection of West Pacific Avenue and South Davis Street and South of the paved portion of West Pacific Avenue as the same is designated and delineated on Exhibit B.

Collectively, the areas permitted for open public consumption of alcoholic beverages pursuant to Sections 1(A-C) of this Resolution shall be referred to as the “Town Open Public Consumption Areas.”

The Town will erect either appropriate barriers or boundaries or sufficient signage to alert members of the public that they are either entering or exiting the Town’s Open Public Consumption Areas.

Section 2. Limited Alcoholic Beverages in Open Public Consumption Areas.

- A. In the Town Open Public Consumption Areas, the Town hereby permits possession and consumption, by those who are at least twenty-one (21) years of age and not otherwise prohibited from possession or consumption of alcoholic beverages, of the following types of alcoholic beverages: malt liquors, vinous liquors or spirituous liquors as the same are defined under the Colorado Liquor Code, 44-3-101 *et. seq.*
- B. Within the Town Open Public Consumption Areas, the only permitted alcoholic beverages to possess or consume are those beverages known as Takeout Alcoholic Beverages (the “Takeout Alcoholic Beverages”) purchased only in sealed containers as authorized pursuant to Colorado Executive Order D 2020 011 as the same has been amended by Colorado Executive Order D 2020 029, Colorado Executive Order D 2020 052, and Colorado Executive Order D 2020 084, which provide for Takeout Alcoholic Beverages from licensed on-premise retail liquor establishments that sell food and operate under and in compliance with one of the following license types:
 - i. Beer and Wine
 - ii. Brew Pubs
 - iii. Club Licenses
 - iv. Distillery Pubs
 - v. Hotel & Restaurant
 - vi. Lodging and Entertainment
 - vii. Tavern
 - viii. Vintners Restaurant
- C. Pursuant to the State of Colorado Liquor Rules, 1 CCR 203-2, specifically Regulation 47-1101, and as defined under C.R.S. Section 44-3-103(51), the following restrictions apply to the permitted Takeout

Alcoholic Beverages authorized for consumption or possession in the Town Open Public Consumption Areas:

- i. Any alcoholic beverage sold to a consumer through takeout shall be in sealed containers, which are defined under C.R.S. Section 44-3-103(51) as “any container or receptacle used for holding an alcohol beverage, which container or receptacle is corked or sealed with any stub, stopper, or cap.”
 - ii. Pursuant to Regulation 47-1101(A)(8)(B), any alcoholic beverages sold to a consumer through takeout shall be in a cup or other container closed securely with a lid taped securely to the cup or other container. A plastic lid complies so long as any holes in the lid are sealed securely with tape, no straw is inserted through the lid, and the contents of the cup are not partially removed. Such a cup or other container shall be affixed with a label containing a warning statement, with a minimum fourteen (14) font size, stating as follows: **“WARNING: DO NOT OPEN OR REMOVE SEAL WHILE IN TRANSIT. Purchasers are subject to state and local laws prohibiting drinking or possessing open containers of alcoholic beverages in motor vehicles, including section 42-4-1305, C.R.S.”**
 - iii. All Takeout Alcoholic Beverages, pursuant to Regulation 47-1101(B), that are sold by a retailer shall be sold with food, such as meals and/or sandwiches and light snacks. Both food and alcohol beverages sold for take-out or delivery must be reflected on the same receipt or transaction.
 - iv. State of Colorado Liquor Rules currently prohibit the refill with alcohol beverage of any alcoholic beverage container and the reuse of such containers by adding any substance, including water, to the alcoholic beverage container. (Regulation 47-904(C), 1 CCR 203-2.)
 - v. Any on-premise retail liquor establishment providing takeout alcoholic beverages is encouraged by the Town of Telluride to explore whether such sealed containers can be made of either stainless steel or aluminum material as a commemorative Telluride cup or that is either compostable or biodegradable and still meet the requirements of this Resolution, the Colorado Liquor Rules and the Colorado Liquor Code.
- D. Consumers of Takeout Alcoholic Beverages are reminded that the sealed containers provided to them must continue to remain sealed during transit from the on-premise retail liquor establishment until the consumer enters a Town Open Public Consumption Area or the consumer risks a violation of Colorado law under C.R.S. Section 44-3-901 or local Telluride law under TMC Section 10-7-10.

Section 3. Limitations and Rules within Town Open Public Consumption Areas.

- A. Hours for permitted possession and consumption of open containers of alcoholic beverages within the Town Open Public Consumption Areas shall be limited from 10am until 10pm daily.
- B. Unless otherwise specifically authorized, amplified music is not permitted in any of the Town Open Public Consumption Areas.
- C. Use of any of the Town Open Public Consumption Areas may be temporarily suspended if the Town has previously or subsequently approved use of these areas, including any portion of the same, for any Special Event Liquor License.

Section 4. Town of Telluride Rulemaking and Enforcement.

The Town shall continue to enforce provisions under Colorado law and local provisions in the Telluride Municipal Code that prohibit the open or public consumption of alcoholic beverages on all public sidewalks, public parks or any other public property not otherwise specifically exempted herein by the terms of this Resolution or other provisions of Colorado law or local Telluride law.

The Town Manager is permitted, if needed, to implement any rules or regulations in furtherance of the equitable and fair implementation of this Resolution provided such rules or regulations do not fundamentally change the intent of this Resolution.

Any violation of this Resolution, Telluride Municipal Code, the Colorado Liquor Code or the Colorado Liquor Rules by an on-premise retail liquor establishment may subject the licensed establishment to public hearing requirements and possible sanctions or fines under the Telluride Municipal Code, the Colorado Liquor Code or the Colorado Liquor Rules.

Section 5. Resolution not Subject to Referendum.

This Resolution addresses the use of real property owned by the Town of Telluride and is, therefore, not subject to the reserved powers of referendum.

Section 6. Effective Date and Expiration.


This Resolution shall be effective as of the date of its adoption. This Resolution shall expire on October 30, 2020 or shall automatically be repealed if any of the following events occur:


- A. The repeal or expiration of State of Colorado Executive Order D 2020-093 that authorizes the suspension of open container prohibitions as to municipal rights-of-way by a local government.
- B. The repeal or expiration of any of the State of Colorado Executive Orders (D 2020 011; D 2020 029; D 2020 052; D 2020 084) which provide for Takeout Alcoholic Beverages from licensed on-premise retail liquor establishments unless the same or similar Executive Order exemption provision for Takeout Alcoholic Beverages is replaced by similar law, rule or order that continues to permit lawful Takeout Alcoholic Beverages or its equivalent.

RESOLVED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO on the 16th day of June 2020.

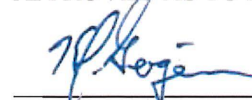
TOWN OF TELLURIDE

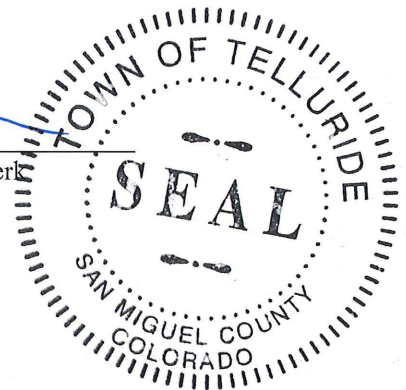
ATTEST


DeLanie Young, Mayor


Tiffany Kavanaugh, Town Clerk

APPROVED AS TO FORM:


Kevin J. Geiger, Town Attorney



STATE OF COLORADO)
)
COUNTY OF SAN MIGUEL) ss.
)
TOWN OF TELLURIDE)

I, Tiffany Kavanaugh, the Town Clerk of the Town of Telluride, Colorado (the "Town"), do hereby certify:

- The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Town Council (the "Council") of the Town at a meeting of the Council held on June 16th, 2020.

- The Resolution was duly moved and seconded and the Resolution was adopted at the Town Council meeting of June 16th, 2020 by an affirmative vote of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Abstain
DeLanie Young, Mayor	✓			
Todd Brown, Mayor Pro Tem	✓			
Adrienne Christy	✓			
Lars Carlson			✓	
Jessie Rae Arguelles	✓			
Geneva Shaunette	✓			
Tom Watkinson	✓			

- The Resolution was approved and authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk and recorded in the minutes of the Council.

- There are no bylaws, rules or regulations of the Council that might prohibit the adoption of said Resolution.

- The members of the Council were present at the meeting and voted on the passage of such Resolution as set forth above.



Tiffany Kavanaugh, Town Clerk

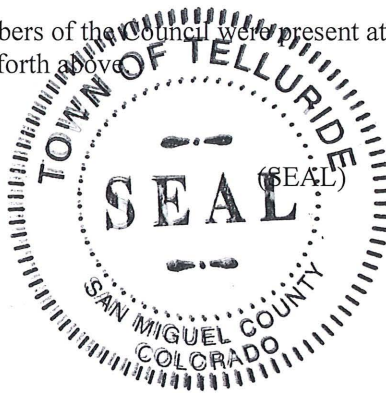


Exhibit A



N. Oak St.

N. Fir St.

parallel parking

westbound travel lane

Centerlane Commercial Loading Zone

eastbound travel lane

parallel parking

Communal Dining Area

Centerlane Commercial Loading Zone

Communal Retail Space/Arts

Communal Dining Area

parallel parking

bike rack

ADA

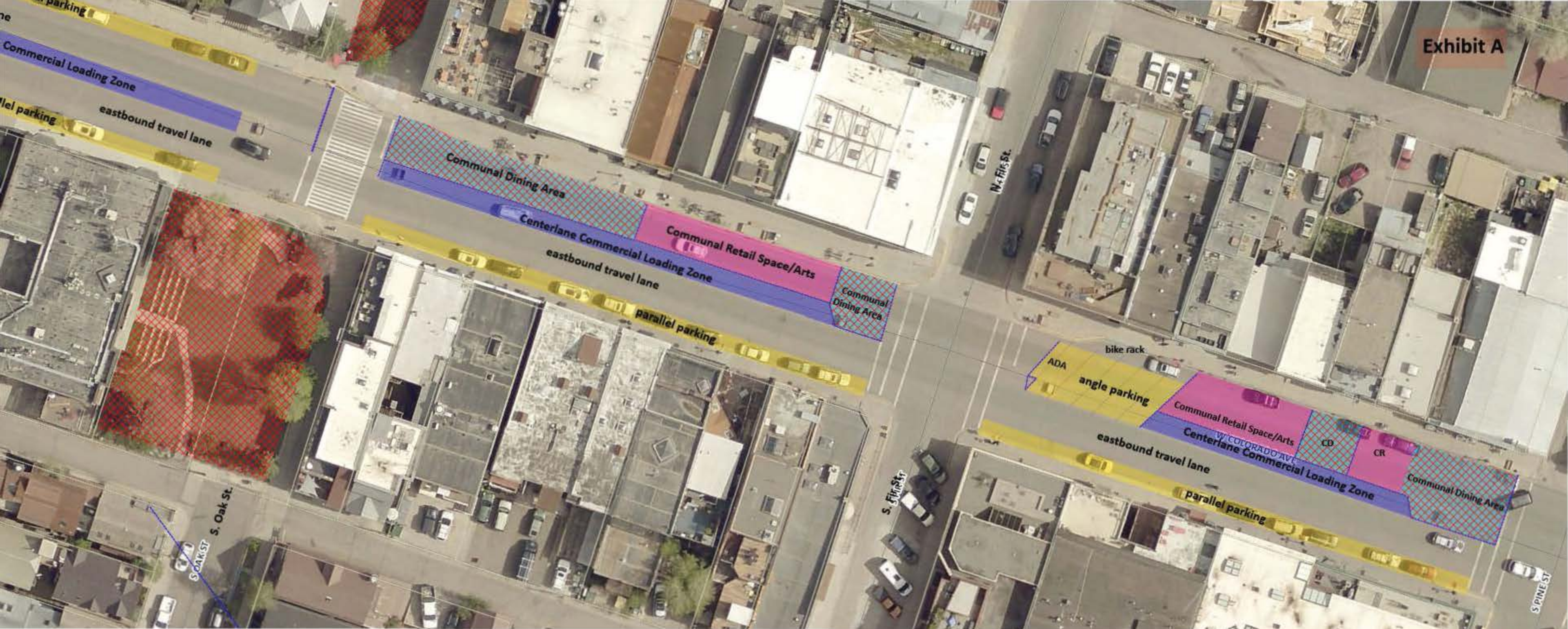


Exhibit A

loading zone

Dining Area

parking

ADA angle parking

Communal Dining Area

Centerlane Commercial Loading Zone

eastbound travel lane

parallel parking

S. Pine St.

S. Spruce St.

Communal Dining Area

ADA angle parking 15 min.

eastbound travel lane

parallel parking

Communal Retail Space/Arts

Centerlane Commercial Loading Zone

Exhibit B

